(2000) 03 OHC CK 0047

In the Orissa High Court

Case No : M.A. No. 281 of 1997

Divisional Manager, Oriental Insurance Co. Ltd. — APPELLANT

Vs

Pramilabala Jena and Others — RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 174

Citation : (2000) 2 ACC 195 : (2001) ACJ 964 : (2000) 89 CLT 728

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.K. Mohanty and M.C. Nayak, for the Appellant; B.N. Rath, A.K. Dash, M.K. Panda and S.C. Ghose, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The insurance company has challenged the award passed by the Second Motor Accidents Claims Tribunal, Berhampur.

2. Two contentions have been raised. It is stated that the quantum assessed by the Claims Tribunal is on the higher side. Keeping in view the decisions of the Apex Court in Narendra Kumar and Another Vs. Yarenissa and Others, and Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, , the insurance company is not entitled to challenge the quantum. Moreover, on assessment it appears that reasonable conclusion has been reached by the Claims Tribunal. It has applied the multiplier indicated in the Schedule. Though there may be some scope for arguing that the multiplier would have been slightly lower, either 15 or 16, it appears that the Claims Tribunal has not considered the future prospects while considering the income of the deceased. The deceased was appointed as a clerk in a college and there cannot be any doubt that he would have earned higher scale of pay in future. If further prospects would have been taken into account, the multiplicand would have been higher. Law is well settled that the appellate court should not interfere with the award of the Claims Tribunal unless the compensation awarded is excessively high or excessively low.

By no stretch of imagination it can be said that the compensation in the present case is excessively high. In such view of the matter, there is no justification to interfere with the quantum given.

3. The learned counsel for the appellant then contended that the driver of the vehicle did not have a valid driving licence. It appears that the owner had not appeared before the Claims Tribunal. In this appeal the insurance company has produced a letter from the Transport Authority, Kohirna, indicating that the driver of the vehicle (Dev Narayan Malhotra) did not have a licence and the seized licence related to somebody else. Learned counsel appearing for the owner in this court, on the other hand, submitted that the owner had bona fidely engaged the driver on the belief that he had a driving licence.

4. Since the question had not been thrashed out by the Claims Tribunal as the owner was ex parte and as the documents now produced by the appellant were not produced before the Claims Tribunal, it would be more appropriate if the question relating to inter se liability of the insurance company and the owner should be re-determined by the Claims Tribunal by giving opportunity of hearing to both of them.

5. The learned counsel appearing for the claimants submitted that the question as to whether there was breach of the condition of the policy should be thrashed out between the owner and the insurance company and the claimants should not be allowed to suffer on that score. He has placed reliance on the provisions of Section 149(4) of the Motor Vehicles Act. In the present case, the question now raised by the appellant relates to alleged breach of the condition of the policy on the ground that the driver did not have valid driving licence. As such keeping in view the policy enshrined in Section 149(4) of the Act, the insurance company can be asked to pay the compensation and claim reimbursement from the owner in accordance with the proviso. In such view of the matter, I call upon the insurance company to deposit the award amount along with interest at the rate of nine per cent before the Claims Tribunal by end of June, 2000. However, if the amount is not deposited, the direction regarding re-determination of the question relating to inter se liability of the insurance company vis-a-vis that of the owner would be inoperative. It is made clear that if ultimately it is found that the insurance company is not liable, necessary direction shall be issued by the Claims Tribunal to reimburse the amount and such direction can be enforced by invoking the provisions of Section 174 of the Motor Vehicles Act. Opportunity of filing written statement shall be given to the owner. The insurance company and the owner are directed to appear before the Claims Tribunal on 4.7.2000.

6. The misc. appeal is accordingly allowed to the extent indicated above. There will be no order as to costs.

